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SUBJECT: Thirteenth Session of the WIPO Standing Committee on the Law of Patents

¶1. SUMMARY: The 13th session of the WIPO Standing Committee on the Law of Patents (SCP) recommenced its work program agreed to by Member States at the June 2008 meeting. The work program includes technical reporting on which to base discussion. Such discussion had been stalled in the SCP for three years when negotiations in 2005 broke down over global patent system harmonization and efforts to weaken substantive patent protection. The WIPO Secretariat prepared reports on four issues for this meeting: dissemination of patent information (including the possible establishment of an online database for such information); exceptions to patentable subject matter and limitations on patent rights; patents and standards; and attorney-client privilege. While discussions intensified over identifying the future work of the Committee, with certain developing countries wanting to focus on limitation and exceptions of patent rights, the SCP agreed to a balanced program of further study. END SUMMARY.

¶2. The WIPO SCP met from March 23 to 27, 2009, on four issues which will continue to be discussed. Delegations from 103 countries, 10 international organizations and 28 non-governmental organizations participated in the Committee which was chaired by Mr. Maximiliano Santa Cruz (Chile). The United States delegation was represented by Charles Elosway and James Housel of the United States Patent and Trademark Office (USPTO), and Deborah Lashley-Johnson, Mission Geneva's IP Attache.

¶3. Discussions quickly focused on patent law/development issues, and the study on limitations and exceptions. Representatives from the Asia Group, Africa Group and Latin American/Caribbean Group stated that public policy concerns must be taken into account when discussing the patent system. In particular, these delegations argued that the work of the Development Agenda (i.e. some demandeurs seek the work of the Development Agenda to undermine IP rights) must be part of the SCP. Further, these delegations argued that work on limitations and exceptions to patent rights must include a specific study on the relationship between regional and bilateral free trade agreements and provisions on limitations and exceptions to be carried out by experts outside of WIPO that are selected by Member States. Delegations from industrialized countries (Group B) argued that the work of the SCP should not be duplicative of work undertaken in other WIPO Committees.

¶4. The U.S., in particular, noted the need to maintain the foundation of the patent system, as it provides the incentives for innovators to take risks that benefit mankind. Moreover, maintaining the patent system--a financial vehicle that is unscathed by the current economic crisis--may enable all countries to see their way out of the crisis. Ultimately, the issue of future work on limitations and exceptions was resolved by the SCP in a balanced manner where public policy issues will be a focused, without highlighting certain trade agreements impacting limitation and exception provisions. This issue is of particular concern for the U.S. and its Free Trade Agreements. We will need to monitor the follow-up study.

¶5. With respect to identifying future work of the Committee, the SCP agreed, late Friday at the close of its week-long session, on a range of work items that will continue to clarify and focus

attention on key substantive issues.

¶16. The Committee reaffirmed that the non-exhaustive list of issues identified at its June 2008 meeting would remain open for further elaboration and discussion at its next session scheduled for November 9 to 13, 2009. The SCP also decided to include two further issues in the list, namely "patents and the environment, with a particular attention to climate change and alternative sources of energy" and "patent quality management systems."

¶17. SCP members agreed that the four preliminary studies on standards and patents, exclusions from patentable subject matter and exceptions and limitations to the rights, the client-attorney privilege and dissemination of patent information which had been the subject of the week's discussions, would remain open for further comments at its next meeting. While the study on patents and standards will remain open for comment, there is no specific further work planned on it at this point.

¶18. In summarizing the additional work of the Committee, the Chair said that the SCP agreed to ask the Secretariat to:

(a) commission external experts (to be selected by the Secretariat as in other Committees) to prepare a study on exclusions, exceptions and limitations focused on, but not limited to, issues suggested by members, such as public health, education, research and experimentation and patentability of life forms, including from a public policy, socio-economic developmental perspective bearing in mind the level of economic development;

(b) prepare a concept paper on technical solutions to improve greater access to, and dissemination of, patent information;

(c) expand the preliminary study on the client-attorney privilege to reflect the current state of play taking into account the perspective of various stakeholders and using external experts, if necessary; and

(d) establish preliminary studies on "Transfer of Technology" and "Opposition Systems."

¶19. It was also agreed that the Secretariat would present the studies to Member States at the beginning of the SCP's November 2009 session.

¶10. A number of Member States stressed the importance of encouraging broad engagement in the work of the Committee and requested availability of all studies in the six official UN languages - Arabic, Chinese, English, French, Russian, and Spanish. At present, SCP documents are prepared in English, French and Spanish.

¶11. Delegates further expressed their support for a Conference to be held on July 13 and 14, 2009, as suggested by the SCP at its June 2008 session. WIPO Director General, Mr. Francis Gurry, told the SCP that he was encouraged by the "positive and considerable interest" in this conference, which will serve as a global forum to discuss issues and solutions to some of the major challenges the world faces today. Consultations on the program of the Conference will be held with Member States.

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